

Effective 5/12/2015

Chapter 6 **Utah Venture Capital Enhancement Act**

Part 1 **General Provisions**

63N-6-101 Title.

This chapter is known as the "Utah Venture Capital Enhancement Act."

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-102 Findings -- Purpose.

(1) The Legislature finds that:

- (a) fundamental changes have occurred in national and international financial markets and in the state's financial markets;
- (b) a critical shortage of seed, venture capital, and private equity resources exists in the state, and that shortage is impairing the growth of commerce in the state;
- (c) a need exists to increase the availability of venture capital and private equity for emerging, expanding, and restructuring enterprises in Utah, including enterprises in the life sciences, advanced manufacturing, and information technology;
- (d) increased venture and private equity capital investments in emerging, expanding, and restructuring enterprises in Utah will:
 - (i) create new jobs in the state; and
 - (ii) help to diversify the state's economic base; and
- (e) a well-trained work force is critical for the maintenance and development of Utah's economy.

(2) This part is enacted to:

- (a) mobilize private investment in a broad variety of venture capital and private equity partnerships in diversified industries and locales;
- (b) retain the private-sector culture of focusing on rate of return in the investing process;
- (c) secure the services of the best managers in the venture capital and private equity industries, regardless of location;
- (d) facilitate the organization of the Utah fund of funds to seek private investments and to serve as a catalyst in those investments by offering state incentives for private persons to make investments in the Utah fund of funds;
- (e) enhance the culture and infrastructure in the state to increase venture capital and private equity investment within the state;
- (f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner that would maximize the direct economic impact for the state; and
- (g) authorize the issuance and use of contingent tax credits to accomplish the purposes referred to in Subsections (2)(a) through (e) while protecting the interests of the state by limiting the manner in which contingent tax credits are issued, registered, transferred, claimed as an offset to the payment of state income tax, and redeemed.

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

63N-6-103 Definitions.

As used in this part:

- (1) "Board" means the Utah Capital Investment Board.
- (2) "Certificate" means a contract between the board and a designated investor under which a contingent tax credit is available and issued to the designated investor.
- (3)
 - (a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
 - (b) "Claimant" does not include an estate or trust.
- (4) "Commitment" means a written commitment by a designated purchaser to purchase from the board certificates presented to the board for redemption by a designated investor. Each commitment shall state the dollar amount of contingent tax credits that the designated purchaser has committed to purchase from the board.
- (5) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient funds in the redemption reserve and the board has not exercised other options for redemption under Subsection 63N-6-408(3)(b).
- (6) "Corporation" means the Utah Capital Investment Corporation created under Section 63N-6-301.
- (7) "Designated investor" means:
 - (a) a person who makes a private investment; or
 - (b) a transferee of a certificate or contingent tax credit.
- (8) "Designated purchaser" means:
 - (a) a person who enters into a written undertaking with the board to purchase a commitment; or
 - (b) a transferee who assumes the obligations to make the purchase described in the commitment.
- (9) "Estate" means a nonresident estate or a resident estate.
- (10) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.
- (11) "Private investment" means:
 - (a) an equity interest in the Utah fund of funds; or
 - (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that was originated before July 1, 2014, and that is refinanced on or after July 1, 2014.
- (12) "Redemption reserve" means the reserve established by the corporation to facilitate the cash redemption of certificates.
- (13) "Taxpayer" means a taxpayer:
 - (a) of an investor; and
 - (b) if that taxpayer is a:
 - (i) claimant;
 - (ii) estate; or
 - (iii) trust.
- (14) "Trust" means a nonresident trust or a resident trust.
- (15) "Utah fund of funds" means a limited partnership or limited liability company established under Section 63N-6-401 in which a designated investor purchases an equity interest.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

Part 2

Utah Capital Investment Board

63N-6-201 Utah Capital Investment Board.

- (1) There is created within the office the Utah Capital Investment Board to exercise the powers conferred by this part.
- (2) The purpose of the board is to mobilize venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
- (3) In the exercise of its powers and duties, the board is considered to be performing an essential public purpose.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-202 Board members -- Meetings -- Expenses.

- (1)
 - (a) The board shall consist of the following five members:
 - (i) the state treasurer;
 - (ii) the director or the director's designee; and
 - (iii) three members appointed by the governor and confirmed by the Senate.
 - (b) The three members appointed by the governor shall serve four-year staggered terms with the initial terms of the first three members to be four years for one member, three years for one member, and two years for one member.
 - (c) The governor shall appoint members of the board based on demonstrated expertise and competence in:
 - (i) the supervision of investment managers;
 - (ii) the fiduciary management of investment funds; or
 - (iii) the management and administration of tax credit allocation programs.
- (2) When a vacancy occurs in the membership of the board for any reason, the vacancy shall be:
 - (a) filled in the same manner as the appointment of the original member; and
 - (b) for the unexpired term of the board member being replaced.
- (3) Appointed members of the board may not serve more than two full consecutive terms except when the governor determines that an additional term is in the best interest of the state.
- (4)
 - (a) Four members of the board constitute a quorum for conducting business and exercising board power.
 - (b) If a quorum is present, the action of a majority of members present is the action of the board.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (6) The board and its members are considered to be a governmental entity with all of the rights, privileges, and immunities of a governmental entity of the state, including all of the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

- (7) Meetings of the board, except to the extent necessary to protect the information identified in Subsection 63N-6-412(3), are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-203 Board duties and powers.

(1) The board shall, by rule:

- (a) establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors by means of certificates issued by the board;
- (b) establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors, including:
 - (i) criteria and procedures for evaluating the value of investments made by the Utah fund of funds; and
 - (ii) the returns from the Utah fund of funds;
- (c) establish criteria and procedures for issuing, calculating, registering, and redeeming contingent tax credits by designated investors holding certificates issued by the board;
- (d) establish a target rate of return or range of returns for the investment portfolio of the Utah fund of funds;
- (e) establish criteria and procedures governing commitments obtained by the board from designated purchasers including:
 - (i) entering into commitments with designated purchasers; and
 - (ii) drawing on commitments to redeem certificates from designated investors;
- (f) have power to:
 - (i) expend funds;
 - (ii) invest funds;
 - (iii) issue debt and borrow funds;
 - (iv) enter into contracts;
 - (v) insure against loss; and
 - (vi) perform any other act necessary to carry out its purpose; and
- (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2)

- (a) All rules made by the board under Subsection (1)(g) are subject to review by the Legislative Management Committee:
 - (i) whenever made, modified, or repealed; and
 - (ii) in each even-numbered year.
- (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review Committee from reviewing and taking appropriate action on any rule made, amended, or repealed by the board.

(3)

- (a) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall include the contingencies that must be met for a certificate and its related tax credits to be:
 - (i) issued by the board;
 - (ii) transferred by a designated investor; and
 - (iii) redeemed by a designated investor in order to receive a contingent tax credit.
- (b) The board shall tie the contingencies for redemption of certificates to:
 - (i) for a private investment initiated before July 1, 2015:

- (A) the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds; and
- (B) the scheduled principal and interest payments payable to designated investors that have made loans initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or
- (ii) for an equity-based private investment initiated on or after July 1, 2015, the positive impact on economic development in the state that is related to the fund's investments or the success of the corporation's economic development plan in the state, including:
 - (A) encouraging the availability of a wide variety of venture capital in the state;
 - (B) strengthening the state's economy;
 - (C) helping business in the state gain access to sources of capital;
 - (D) helping build a significant, permanent source of capital available for businesses in the state; and
 - (E) creating benefits for the state while minimizing the use of contingent tax credits.
- (4)
 - (a) The board may charge a placement fee to the Utah fund of funds for the issuance of a certificate and related contingent tax credit to a designated investor.
 - (b) The fee shall:
 - (i) be charged only to pay for reasonable and necessary costs of the board; and
 - (ii) not exceed .5% of the private investment of the designated investor.
- (5) The board's criteria and procedures for redeeming certificates:
 - (a) shall give priority to the redemption amount from the available funds in the redemption reserve; and
 - (b) to the extent there are insufficient funds in the redemption reserve to redeem certificates, shall grant the board the option to redeem certificates:
 - (i) by certifying a contingent tax credit to the designated investor; or
 - (ii) by making demand on designated purchasers consistent with the requirements of Section 63N-6-409.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

Part 3

Utah Capital Investment Corporation

63N-6-301 Utah Capital Investment Corporation -- Powers and purposes.

- (1)
 - (a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.
 - (b) The corporation:
 - (i) may exercise all powers conferred on independent corporations under Section 63E-2-106;
 - (ii) is subject to the prohibited participation provisions of Section 63E-2-107; and
 - (iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.
 - (c) The corporation shall file with the Division of Corporations and Commercial Code:
 - (i) articles of incorporation; and

- (ii) any amendment to its articles of incorporation.
 - (d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.
 - (e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.
- (2) The purposes of the corporation are to:
- (a) organize the Utah fund of funds;
 - (b) select an investment fund allocation manager to make venture capital and private equity fund investments by the Utah fund of funds;
 - (c) negotiate the terms of a contract with the investment fund allocation manager;
 - (d) execute the contract with the selected investment fund manager on behalf of the Utah fund of funds;
 - (e) receive funds paid by designated investors for the issuance of certificates by the board for private investment in the Utah fund of funds;
 - (f) receive investment returns from the Utah fund of funds; and
 - (g) establish the redemption reserve to be used by the corporation to redeem certificates.
- (3) The corporation may not:
- (a) exercise governmental functions;
 - (b) have members;
 - (c) pledge the credit or taxing power of the state or any political subdivision of the state; or
 - (d) make its debts payable out of any money except money of the corporation.
- (4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.
- (5) The corporation may:
- (a) engage consultants and legal counsel;
 - (b) expend funds;
 - (c) invest funds;
 - (d) issue debt and equity, and borrow funds;
 - (e) enter into contracts;
 - (f) insure against loss;
 - (g) hire employees; and
 - (h) perform any other act necessary to carry out its purposes.
- (6)
- (a) The corporation shall, in consultation with the board, publish on or before September 1 an annual report of the activities conducted by the Utah fund of funds and submit the report to the governor; the Business, Economic Development, and Labor Appropriations Subcommittee; the Business and Labor Interim Committee; and the Retirement and Independent Entities Interim Committee.
 - (b) The annual report shall:
 - (i) be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature;
 - (ii) include a copy of the audit of the Utah fund of funds described in Section 63N-6-405;
 - (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow statement;
 - (iv) include detailed information regarding new fund commitments made during the year, including the amount of money committed;

- (v) include the net rate of return of the Utah fund of funds from the inception of the Utah fund of funds, after accounting for all expenses, including administrative and financing costs;
 - (vi) include detailed information regarding:
 - (A) realized gains from investments and any realized losses; and
 - (B) unrealized gains and any unrealized losses based on the net present value of ongoing investments;
 - (vii) include detailed information regarding all yearly expenditures, including:
 - (A) administrative, operating, and financing costs;
 - (B) aggregate compensation information for full- and part-time employees, including benefit and travel expenses; and
 - (C) expenses related to the allocation manager;
 - (viii) include detailed information regarding all funding sources for administrative, operations, and financing expenses, including expenses charged by or to the Utah fund of funds, including management and placement fees;
 - (ix) review the progress of the investment fund allocation manager in implementing its investment plan and provide a general description of the investment plan;
 - (x) for each individual fund that the Utah fund of funds is invested in that represents at least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;
 - (xi) include the number of companies in Utah where an investment was made from a fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time employees in the state added by all companies where investments were made by funds that the Utah fund of funds is invested in;
 - (xii) include an aggregate total value for all funds the Utah fund of funds is invested in, and an aggregate total amount of money invested in the state by the funds the Utah fund of funds is invested in;
 - (xiii) describe any redemption or transfer of a certificate issued under this part;
 - (xiv) include actual and estimated potential appropriations the Legislature will be required to provide as a result of redeemed certificates or tax credits during the following five years;
 - (xv) include an evaluation of the state's progress in accomplishing the purposes stated in Section 63N-6-102; and
 - (xvi) be directly accessible to the public via a link from the main page of the Utah fund of fund's website.
- (c) The annual report may not identify a specific designated investor who has redeemed or transferred a certificate.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

63N-6-302 Incorporator -- Appointment committee.

- (1) To facilitate the organization of the corporation, the executive director or the executive director's designee shall serve as the incorporator as provided in Section 16-6a-201.
- (2) To assist in the organization of the corporation, the Utah Board of Business and Economic Development shall appoint three individuals to serve on an appointment committee.
- (3) The appointment committee shall:
 - (a) elect the initial board of directors of the corporation;

- (b) exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this part, including in areas related to:
 - (i) venture capital investment;
 - (ii) investment management; and
 - (iii) supervision of investment managers and investment funds; and
- (c) terminate its existence upon the election of the initial board of directors of the corporation.
- (4) The office shall assist the incorporator and the appointment committee in any manner determined necessary and appropriate by the incorporator and appointment committee in order to administer this section.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-303 Board of directors.

- (1) The initial board of directors of the corporation shall consist of five members.
- (2) The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise, as considered appropriate by the appointment committee, in the areas of:
 - (a) the selection and supervision of investment managers;
 - (b) fiduciary management of investment funds; and
 - (c) other areas of expertise as considered appropriate by the appointment committee.
- (3) After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be filled by election by the remaining directors of the corporation.
- (4)
 - (a) Board members shall serve four-year terms, except that of the five initial members:
 - (i) two shall serve four-year terms;
 - (ii) two shall serve three-year terms; and
 - (iii) one shall serve a two-year term.
 - (b) Board members shall serve until their successors are elected and qualified and may serve successive terms.
 - (c) A majority of the board members may remove a board member for cause.
 - (d)
 - (i) The board shall select a chair by majority vote.
 - (ii) The chair's term is for one year, which may be extended annually by a majority vote of the members of the board of directors.
- (5) Three members of the board are a quorum for the transaction of business.
- (6) Members of the board of directors:
 - (a) are subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation;
 - (b) shall annually disclose any venture capital and private equity interests to the corporation; and
 - (c) may not participate in a vote by the board of directors related to an investment by the Utah fund of funds, if the member has an interest in the investment.
- (7) Directors of the corporation:
 - (a) shall be compensated for direct expenses and mileage; and
 - (b) may not receive a director's fee or salary for service as directors.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

63N-6-304 Investment manager.

- (1) After incorporation, the corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Utah fund of funds in accordance with the requirements of this part.
- (2) Any proposed investment plan shall address the applicant's:
 - (a) level of:
 - (i) experience; and
 - (ii) quality of management;
 - (b) investment philosophy and process;
 - (c) probability of success in fund-raising;
 - (d) prior investment fund results; and
 - (e) plan for achieving the purposes of this part.
- (3) The selected venture capital investment fund allocation manager shall have substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation.
- (4) The corporation shall only select a venture capital investment fund allocation manager:
 - (a) with demonstrated expertise in the management and fund allocation of investments in venture capital funds; and
 - (b) considered best qualified to:
 - (i) invest the capital of the Utah fund of funds; and
 - (ii) generate the amount of capital required by this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-305 Management fee -- Additional financial assistance.

- (1) The corporation may charge a management fee on assets under management in the Utah fund of funds.
- (2) The fee shall:
 - (a) be in addition to any fee charged to the Utah fund of funds by the venture capital investment fund allocation manager selected by the corporation; and
 - (b) be charged only to pay for reasonable and necessary costs of the corporation.
- (3) The corporation may apply for and, when qualified, receive financial assistance from the Industrial Assistance Account under Chapter 3, Part 1, Industrial Assistance Account, and under rules made by the Board of Business and Economic Development in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to help establish the program authorized under this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-306 Dissolution.

- (1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated and dissolved.
- (2) Upon dissolution or privatization of the corporation, any assets owned by the corporation shall be distributed to one or more Utah nonprofit tax exempt organizations to be designated by the Legislature for the purposes listed in Section 63N-6-102 as provided in Title 63E, Chapter 1, Independent Entities Act.

Renumbered and Amended by Chapter 283, 2015 General Session

Part 4

Utah Fund of Funds

63N-6-401 Organization of Utah fund of funds.

- (1) The corporation shall organize the Utah fund of funds.
- (2) The Utah fund of funds shall make investments in venture capital and private equity partnerships or entities in a manner and for the following purposes:
 - (a) to encourage the availability of a wide variety of venture capital in the state;
 - (b) to strengthen the economy of the state;
 - (c) to help business in the state gain access to sources of capital;
 - (d) to help build a significant, permanent source of capital available to serve the needs of businesses in the state; and
 - (e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.
- (3) The Utah fund of funds shall be organized:
 - (a) as a limited partnership or limited liability company under Utah law having the corporation and qualified investment professionals as the general partner or manager;
 - (b) to provide for equity interests for designated investors, which provide for a designated scheduled return and a scheduled redemption in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (c) to provide for loans by or the issuance of debt obligations to designated investors that provide for designated payments of principal, interest, or interest equivalent in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) Public money may not be invested in the Utah fund of funds.

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

63N-6-402 Compensation from the Utah fund of funds to the corporation -- Redemption reserve.

- (1) The corporation shall be compensated for its involvement in the Utah fund of funds through the payment of the management fee described in Section 63N-6-305.
- (2) Before any returns may be reinvested in the Utah fund of funds:
 - (a) any returns shall be paid to designated investors, including the repayment by the Utah fund of funds of any outstanding loans;
 - (b) any returns in excess of those payable to designated investors shall be deposited in the redemption reserve and held by the corporation as a first priority reserve for the redemption of certificates;
 - (c) any returns received by the corporation from investment of amounts held in the redemption reserve shall be added to the redemption reserve until it has reached a total of \$250,000,000; and
 - (d) if at the end of a calendar year the redemption reserve exceeds the \$250,000,000 limitation referred to in Subsection (2)(c), the corporation may reinvest the excess in the Utah fund of funds.

- (3) Funds held by the corporation in the redemption reserve shall be invested in accordance with Title 51, Chapter 7, State Money Management Act.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-403 Investments by Utah fund of funds.

- (1) The Utah fund of funds shall invest funds:
- (a) principally in high-quality venture capital funds managed by investment managers who have:
 - (i) made a commitment to equity investments in businesses located within the state; and
 - (ii) have committed to maintain a physical presence within the state;
 - (b) in private venture capital funds and not in direct investments in individual businesses; and
 - (c) in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds.
- (2)
- (a) The Utah fund of funds shall give priority to investments in private seed and venture capital partnerships and entities that have demonstrated a commitment to the state as evidenced by:
 - (i) the investments they have made in Utah-based entities;
 - (ii) the correspondent relationships they have established with Utah-based venture capital funds; or
 - (iii) the commitment they have made to expand the reach of expertise within the state by adding additional investment areas of expertise.
 - (b) The manager of the Utah fund of funds may waive the priorities under Subsection (2)(a) only if necessary to achieve the targeted investment returns required to attract designated investors.
- (3) The Utah fund of funds may invest funds in a newly created venture capital fund only if the managers or management team of the fund have the experience, expertise, and a successful history in the investment of venture capital funds as described in Subsection (1)(c).
- (4)
- (a) An investment or investments by the Utah fund of funds in any venture capital fund may comprise no more than 20% of the total committed capital in the venture capital fund.
 - (b)
 - (i) No more than 50% of the funds invested by the Utah fund of funds may be made with venture capital entities with offices in the state established prior to July 1, 2002.
 - (ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional venture capital entities open new offices in the state.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-404 Powers of Utah fund of funds.

- (1) The Utah fund of funds may:
- (a) engage consultants and legal counsel;
 - (b) expend funds;
 - (c) invest funds;
 - (d) issue debt and borrow funds;
 - (e) enter into contracts;
 - (f) insure against loss;
 - (g) hire employees;

- (h) issue equity interests to designated investors that have purchased equity interest certificates from the board; and
 - (i) perform any other act necessary to carry out its purposes.
- (2)
- (a) The Utah fund of funds shall engage a venture capital investment fund allocation manager.
 - (b) The compensation paid to the fund manager shall be in addition to the management fee paid to the corporation under Section 63N-6-305.
- (3) The Utah fund of funds may:
- (a) open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager; and
 - (b) expend money to secure investment ratings for investments by designated investors in the Utah fund of funds.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-405 Annual audits.

- (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be made as described in this section.
- (2)
- (a) The audit shall be conducted by:
 - (i) the state auditor; or
 - (ii) an independent auditor engaged by the state auditor.
 - (b) An independent auditor used under Subsection (2)(a)(ii) must have no business, contractual, or other connection to:
 - (i) the corporation; or
 - (ii) the Utah fund of funds.
- (3) The corporation shall pay the costs associated with the annual audit.
- (4) The annual audit report shall:
- (a) be delivered to:
 - (i) the corporation; and
 - (ii) the board;
 - (b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year;
 - (c) include an opinion regarding the accuracy of the information provided in the annual report described in Subsection 63N-6-301(6);
 - (d) include an opinion regarding the accuracy of the information that supports the economic development impact in the state of the Utah fund of funds as described in Subsections 63N-6-203(3)(b)(ii) and 63N-6-406(3); and
 - (e) be completed on or before September 1 for the previous calendar year so that it may be included in the annual report described in Subsection 63N-6-301(6).

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

63N-6-406 Certificates and contingent tax credits.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the application for, form, issuance, transfer, and redemption of certificates.

- (2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:
 - (a) the aggregate outstanding certificates may not exceed a total of:
 - (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014, or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and
 - (ii) \$100,000,000 used as an incentive for equity investments in the Utah fund of funds;
 - (b) the board shall issue a certificate contemporaneously with a debt-based investment in the Utah fund of funds by a designated investor, including a refinanced loan as described in Subsection (2)(e);
 - (c) the board shall issue contingent tax credits in a manner that not more than \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax credits may be redeemable in a fiscal year;
 - (d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b);
 - (e) the board may not issue additional certificates as collateral or a guarantee on a loan for the debt-based financing of investments in the Utah fund of funds that is initiated after July 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1, 2014, that was originated before July 1, 2014; and
 - (f) after July 1, 2014, the board may issue certificates that represent no more than 100% of the principal of each equity investment in the Utah fund of funds.
- (3) For an equity-based private investment initiated on or after July 1, 2015, the applicable designated investor may apply for a tax credit if the following criteria are met:
 - (a) the Utah fund of funds has received payment from the designated investor as set forth in the investor's agreement with the Utah fund of funds;
 - (b) the designated investor has not received a return of the initial equity investment in the time established in the investor's agreement with the Utah fund of funds;
 - (c) there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b); and
 - (d) there is a demonstrated positive impact on economic development in the state related to the Utah fund of funds' investments or the success of the corporation's economic development plan in the state, which shall be measured by:
 - (i) a method to calculate the impact on economic development in the state, established by rule; and
 - (ii) the corporation, with approval of the board, engaging an independent third party to evaluate the Utah fund of funds and determine the economic impact of the Utah fund of funds and the activities of the corporation as further described in Section 63N-6-203 and board rules.
- (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection (2)(b):
 - (a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;
 - (b) certificates and related contingent tax credits that have expired may not be included; and
 - (c) certificates and related contingent tax credits that have been redeemed shall be included only to the extent of tax credits actually allowed.
- (5) Contingent tax credits are subject to the following:

- (a) a contingent tax credit may not be redeemed except by a designated investor in accordance with the terms of a certificate from the board;
 - (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate as established in the agreement with the Utah fund of funds;
 - (c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;
 - (d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and
 - (e) a contingent tax credit shall be claimed as a refundable credit.
- (6) In calculating the amount of a contingent tax credit:
- (a) the board shall certify a contingent tax credit only if the actual return, or payment of principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less than that targeted at the issuance of the certificate;
 - (b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between the actual principal investment of the designated investor in the Utah fund of funds and the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;
 - (c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate; and
 - (d) the amount of the contingent tax credit for a designated investor with an outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, may be equal to no more than the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
- (7) The board shall clearly indicate on the certificate:
- (a) the targeted return on the invested capital, if the private investment is an equity interest;
 - (b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014;
 - (c) the amount of the initial private investment;
 - (d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and
 - (e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.
- (8) Once a certificate is issued, a certificate:
- (a) is binding on the board; and
 - (b) may not be modified, terminated, or rescinded.
- (9) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.
- (10) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

Renumbered and Amended by Chapter 283, 2015 General Session
Amended by Chapter 420, 2015 General Session

63N-6-407 Transfer and registration of certificates.

- (1) A certificate and the related contingent tax credit may be transferred by the designated investor.
- (2) The board, in conjunction with the State Tax Commission, shall develop:
 - (a) a system for registration of any certificate and related contingent tax credit issued or transferred under this part; and
 - (b) a system that permits verification that:
 - (i) any contingent tax credit claimed is valid; and
 - (ii) any transfers of the certificate and related contingent tax credit are made in accordance with the requirements of this part.
- (3) A certificate or contingent tax credit issued or transferred under this part may not be considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-408 Redemption of certificates.

- (1) If a designated investor elects to redeem a certificate, the certificate shall be presented to the board for redemption no later than June 30 of the calendar year maturity date stated on the certificate.
- (2) Upon presentment to the board, it shall determine and certify the amount of the contingent tax credit that may be claimed by the designated investor based on:
 - (a) the limitations in Section 63N-6-406; and
 - (b) rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) If there are sufficient funds in the redemption reserve, the board shall direct the corporation to make a cash redemption of the certificate.
 - (b) If there are insufficient funds in the redemption reserve, the board may elect to redeem the certificate:
 - (i) by certifying a contingent tax credit to the designated investor; or
 - (ii) by making demand on designated purchasers to purchase certificates in accordance with Section 63N-6-409.
- (4) The board shall certify to the State Tax Commission the contingent tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.
- (5) The board shall cancel all redeemed certificates.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-409 Use of commitments to redeem certificates.

- (1) The board may elect to draw on a commitment to redeem a certificate from a designated investor.
- (2) If the board makes an election under Subsection (1), it shall:
 - (a) inform the designated purchaser of the amount of the contingent tax credit that must be purchased from the board;
 - (b) specify the date on which the purchase must be consummated; and
 - (c) use the funds delivered to the board by the designated purchaser to redeem the certificate from the designated investor.

- (3) The board has discretion in determining which commitment or commitments and what portion of those commitments to use to redeem certificates.
- (4) The contingent tax credits acquired by a designated purchaser under this section are subject to Section 63N-6-406.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-410 Powers and effectiveness.

- (1) This chapter may not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this chapter are cumulative to those powers.
- (2) This chapter shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers to those conferred by any other laws.
- (3) With respect to a debt-based private investment only, the provisions of any contract entered into by the board or the Utah fund of funds may not be compromised, diminished, invalidated, or affected by the:
 - (a) level, timing, or degree of success of the Utah fund of funds or the investment funds in which the Utah fund of funds invests; or
 - (b) extent to which the investment funds are:
 - (i) invested in Utah venture capital projects; or
 - (ii) successful in accomplishing any economic development objectives.

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

63N-6-411 Permissible investments.

Investments by designated investors in the Utah fund of funds are permissible investments under applicable laws of the state for:

- (1) state-chartered banks;
- (2) state-chartered credit unions;
- (3) state-chartered industrial banks; and
- (4) domestic insurance companies.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-6-412 Exemption from certain statutes.

- (1) Except as otherwise provided in this part, the corporation is exempt from statutes governing state agencies, as provided in Section 63E-2-109.
- (2) The corporation is exempt from:
 - (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (b) Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) The board is exempt from the requirement to report fund performance of venture firms and private equity firms set forth in Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 283, 2015 General Session

